IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) INC. Petitioner, vs. PAPST LICENSING GmbH & CO. KG, Patent Owner.	Case No. To Be Assigned

DEPOSITION OF: KEVIN ALMEROTH

TAKEN ON: AUGUST 24, 2017

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

DEPOSITION OF KEVIN ALMEROTH,
taken on behalf of the Patent
Owner, at 333 South Hope Street,
43rd Floor, Los Angeles,
California, commencing at
8:42 A.M. on August 24, 2017,
before PATRICIA L. HUBBARD,
CSR #3400, a Certified Shorthand
Reporter in and for the State of
California.

APPEARANCES OF COUNSEL:

For the Petitioner:

SHEPPARD MULLIN RICHTER & HAMPTON LLP
BY: TREVOR J. QUIST, ESQ.
12275 El Camino Real
Suite 200
San Diego, California 92130
858.720.8900
-AND-
SHEPPARD MULLIN RICHTER & HAMPTON LLP
BY: SCOTT R. MILLER, ESQ.
333 South Hope Street
43rd Floor
Los Angeles, California 90071
213.620.1780
smiller@sheppardmullin.com

APPEARANCES OF COUNSEL: (Continued)

For the Patent Owner:

FITCH, EVEN, TABIN & FLANNERY LLP
BY: PAUL B. HENKELMANN, ESQ.
120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603
312.577.7000
phenkelmann@fitcheven.com

For the Samsung Electronics Parties:
DRINKER BIDDLE & REATH LLP
BY: NICK COLIC, ESQ.
1500 K Street, N.W.
Washington, DC 20005
202.230.5115
nick.colic@dbr.com
(Present via telephone)

I N D E X

E X H I B I T S

I N D E X (Continued)

INFORMATION REQUESTED:
(NONE)

WITNESS INSTRUCTED NOT TO ANSWER:
(NONE)

LOS ANGELES, CALIFORNIA
AUGUST 24, 2017
* * *

KEVIN ALMEROTH,
called as a witness, having been sworn, was examined and testified as follows:

EXAMINATION

BY MR. HENKELMANN:

Q. Good morning, Dr. Almeroth.

A. Good morning.

Q. Thanks for coming in today.

Just initially, have you been deposed before?

A. I have.

Q. Okay. So you know the ground rules generally in a deposition. You're required to answer my questions. If you don't understand, please let me know. I'll try to rephrase the question.

We're talking about two of your declarations in two separate IPR matters.

You gave a declaration in the IPR2017-00713 and IPR2017-00714. The first one has to do with U.S. Patent number 6,895,449, that's the 713 matter, and the 714 IPR has to do with U.S. Patent 6,470,399.

I may refer to those declarations as the '449 Declaration or the '399 Declaration, if that's okay.

A. That is.

Q. Okay. I will hand to you what's marked as Exhibit 1, your declaration in support of petition for inter partes review of U.S. Patent Number 6,895,449.

(Whereupon the document referred to was marked Almeroth Exhibit 1 by the Certified Shorthand Reporter and is attached hereto.)

MR. QUIST: And, Counsel, can you represent for the record that those are true and accurate copies of the exhibits filed in these proceedings?

MR. HENKELMANN: Yes, I can.

BY MR. HENKELMANN:

Q. I'm just going to hand you all the paper now.

MR. QUIST: Briefly, the '449 is marked as Exhibit 1.

And is there not a stamp on that one?

MR. HENKELMANN: Oh, is that -- I'm sorry.

Could you mark this as Exhibit 2, please.

MR. QUIST: So for the record the Declaration of Kevin Almeroth in Support of Petition For Inter Partes Review of U.S. Patent Number 6,895,449 is marked as Exhibit 1.

And the Declaration of Kevin Almeroth in Support of Petitioner For Inter Partes Review of U.S. Patent number 6,895,449.

MR. MILLER: 399.

MR. QUIST: Sorry.

-- the '399 Patent is marked as Exhibit number 2.

(Whereupon the document referred to was marked Almeroth Exhibit 2 by the Certified Shorthand Reporter and is attached hereto.)

THE REPORTER: Here you go.

THE WITNESS: Thank you.

///

BY MR. HENKELMANN:

Q. We'll do our best to keep these straight.

MR. HENKELMANN: Let's mark a few more exhibits in case we need them.

Marking as Exhibit number 3 U.S. Patent 6,895,449 to Michael Tasler.

(Whereupon the document referred to was marked Almeroth Exhibit 3 by the Certified Shorthand Reporter and is attached hereto.)

MR. HENKELMANN: And marking as Exhibit 4 U.S. Patent 6,470,399 to Michael Tasler.

(Whereupon the document referred to was marked Almeroth Exhibit 4 by the Certified Shorthand Reporter and is attached hereto.)

MR. HENKELMANN: And then finally marking as Exhibit number 5 U.S. Patent number 5,758,081 to Aytac.

(Whereupon the document referred to was marked Almeroth Exhibit 5 by the Certified Shorthand Reporter and is attached hereto.)

MR. QUIST: Is that the last exhibit

you're going to be marking for now?
MR. HENKELMANN: For now.
MR. QUIST: And again as to Exhibits 3 through 5 do you represent those are true and accurate copies of the '499 Patent, the '399 Patent and the '081 Patent respectively?
MR. HENKELMANN: To the best of my knowledge.
BY MR. HENKELMANN:
Q. Mr. Almeroth, do you -- could you take a look at the two declarations and see if you recognize those as the declarations you gave in the respective matters?
A. They appear to be.
Q. Okay. Dr. Almeroth, how long did you prepare for this deposition?
A. I would say maybe between 10 to 15 hours.
Q. Okay. And did you prepare with anyone?
A. I did.
Q. Who did you prepare with?
A. With counsel.
Q. The counsel in this room?
A. Yes.
Q. Anyone else?

A. No.
Q. Who is paying you for your testimony?
A. For testimony today I believe it would be ZTE.
Q. And are there other companies that might be paying you for other testimony in these matters?
A. Well, you said "these matters."
Q. In these two IPR proceedings?
A. I would have to go back and check. I don't recall if there were -- I know in some instances there have been duplicate petitions filed in case primary settles. And so I'm not sure for which petitions there have been additional petitions that have been filed.
Q. So you might be paid by the parties that have joined the '449 proceeding?
A. For today?
Q. For today.
A. I don't believe so.
Q. Okay. And going forward after today?
A. I don't know what's going to happen after today.
Q. Okay. Okay. When were you retained for this -- for these two matters?
MR. QUIST: Objection. Form.

THE WITNESS: I don't recall exactly when it was. It would have been sometime before the declaration was filed, but I don't recall how -- how much before that.
BY MR. HENKELMANN:
Q. How long did you have to prepare your declarations in both of these matters?
MR. QUIST: Objection. Form.
THE WITNESS: I don't recall.
BY MR. HENKELMANN:
Q. Do you recall how long it took you to prepare your declaration in the '449 matter?
A. No.
Q. Do you recall how long it took you to prepare your declaration for the '399 matter?
A. No.
Q. So, you signed these -- both of these declarations on January 17th of 2017; is that correct?
A. Yes.
Q. So you don't recall when you were retained prior to that date in either of these?
A. I don't. I don't recall how much --
MR. QUIST: Objection. Form.
THE WITNESS: Sorry. I don't recall how

much before this date I was retained specifically to work on these declarations.
BY MR. HENKELMANN:
Q. For the '449 Declaration, did you prepare this declaration yourself?
MR. QUIST: Objection. Privilege.
And actually, Counselor, Are you seeking a waiver by that question of the work product privilege?
MR. HENKELMANN: No.
MR. QUIST: Okay. Regardless, I'll lodge an objection for privilege and instruct the witness only to answer to the extent you are not conveying any information about communications between you and attorneys for the petitioner's.
THE WITNESS: Understood.
Could you repeat the question?
BY MR. HENKELMANN:
Q. Did you prepare your declaration for the '449 proceeding yourself?
A. For the most part, I did. Ultimately when I signed the declaration, I had ensured that it was reflective of all of the opinions that I had developed in the case at that point.
Q. So you didn't write the entire

declaration yourself?
MR. QUIST: Objection. Privilege.
Again, the expert is instructed -- we're going to instruct the expert not to answer to the extent that it is directed toward attorney communications with the expert.
THE WITNESS: I don't believe so. I mean generally just looking at it, there's citations from materials. Obviously I didn't write the underlying material. So in some instances I would have cut and pasted material.
And again, it represents the opinions that I had developed when I signed my name to it.
BY MR. HENKELMANN:
Q. Did you write the first draft of this declaration?
MR. QUIST: Objection. Privilege. Same instruction.
THE WITNESS: I don't recall specifically. But it's my practice to write the first draft of my reports or declarations.
BY MR. HENKELMANN:
Q. So you don't recall whether you wrote the first draft of this declaration in the '449 matter?

MR. QUIST: Objection. Form. Objection. Privilege. Same instruction as to privilege.
THE WITNESS: It's the same answer. I don't recall specifically other than to say what my general practice is.
BY MR. HENKELMANN:
Q. Did you work with counsel on drafting this declaration?
MR. QUIST: Counselor, I'm -- I think that we're -- I think these questions are directed at privileged subject matter under the work product privilege afforded by Rule 26.
And I don't, you know, mean to interrupt your flow. We're happy to meet and confer off the record or on the record about this. But working drafts and drafts of expert reports under Rule 26 are protected under the work product doctrine.
And I guess I don't know where you're going with these questions. But in general those are protected communications. And drafts of expert reports and expert declarations are also privileged.
MR. HENKELMANN: I'm not trying to find out what the communications were. I'm just trying to find out, you know, who wrote the declaration.

MR. QUIST: Yeah. I think that that, too, is protected under the work product privilege afforded my Rule 26, certainly as to, you know, post amendments to Rule 26 and 2010.
MR. HENKELMANN: Okay. So are you instructing him not to answer any further questions on this?
MR. QUIST: I'm instructing him not to answer to the extent this -- to the extent any of his responses are related to attorney communications with the expert or communications concerning any drafts of the declaration or expert report in either of these matters.
If you want to ask him yes or no questions as to what he recalls as to what he -- what he wrote or you want to ask him questions about his compensation in the matter, those are certainly allowed. But beyond that, I'm instructing him not to answer.
MR. HENKELMANN: Okay. I'm -- I'm trying to steer clear of finding out any communications between counsel and the witness.
MR. QUIST: Okay.
MR. HENKELMANN: Also, I believe objections should be limited to short, you know,

one-sentence objections under the rules here in IPR's.
MR. QUIST: Understood. And that's -- that whole length of conversation is not meant to be an objection.
The -- I am happy to meet and confer with you. We just want to try and understand what -- the scope of your questions here so we know what -- what falls inside and outside of the privilege. And it's not clear from your -- from your questions so far.
So, the objection is simply privilege. My instruction to the expert is not to respond to the extent it essentially runs afoul of Rule 26, which I'm happy to recite or -- sorry, not recite, but read if -- if necessary to clear anything up.
MR. HENKELMANN: Okay.
BY MR. HENKELMANN:
Q. I just want to ask the same question for the '399.
Dr. Almeroth, did you write the first draft of this declaration for the '399 patent?
A. To the best of my recollection. It's usually my standard practice to do the first draft of my declarations or reports.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.